

October 22, 2025

Via Email

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210S
Washington, DC 20001

Re: Post Hearing Submission - BZA Case No. 21333

Dear Chairperson Hill and Members of the Board:

As requested by the Board, the following materials are being submitted to the record.

1. Clarity on the licensing for commercial business and rental property – response below.
2. Comments on precedence of *Bernstein v. D.C. BZA* – response below.
3. Letter from the previous Zoning Administrator and follow-up with the current ZA – included in a separate document with a response below.
4. Updated architectural plans to show rooms and windows - included in a separate document.
5. HPRB staff report - included in a separate document.

1. Clarity on the Licensing for Commercial Business and Rental Property:

With respect to the property owner, the entity owning the property is registered as a foreign entity in the District of Columbia, and while a landlord BBL has not yet been obtained, the Applicant is in the process of applying for a Basic Business License. The license, however, is not attainable until a Certificate of Occupancy is secured.

2. Comments on Precedence of *Bernstein v. D.C. BZA*:

In *Norman Bernstein et al., v. DC Bd. Of Zoning Adjustment*, 376 A.2d 816 (1977) (hereinafter referred to as “**Bernstein**”), the Court of Appeals affirmed the BZA’s denial of a use variance requested by a property owner who had illegally created the non-compliant use twenty years earlier. While *Bernstein* is partially applicable to the present Application, in that it provides a general description of the meaning of “*undue hardship*,” it is quite distinguishable from the present fact pattern in several critical areas.

In *Bernstein*, the noncompliant office use for which variance relief was requested was *never* sanctioned by an occupancy permit and was never a legal use. In the present case, the

nonconforming use was created lawfully, was sanctioned by an occupancy permit, and was a legal use for many years, until an owner previous to the Applicant replaced a dry cleaner tenant with an office tenant. The Applicant is now working to correct that and allow for the use of the space by another office tenant. The previous owner was required to obtain use variance approval to allow the change of the dry cleaner use to an office use. The current owner is seeking the approval that the previous owner failed to secure.

Pursuant to *Bernstein*, undue hardship is found when the strict application of zoning regulations would preclude use of property for any purpose to which it may be reasonably adapted. In this case, the argument is that the Property cannot be reasonably adapted to residential because of (i) the cost of converting to residential use due to its historic commercial use from inception and its physical configuration from inception; and (ii) historic preservation restrictions on the alteration of the large front window prevent, regardless of cost, the conversion to a façade that would support a residential use behind it.

In summary, while the case underlying *Bernstein* was not similar to the present case, in several critical areas, this Application does meet the criteria of undue hardship, as described by *Bernstein* and its progeny, and as adjudicated by this Board in the four recent similar – nearly identical – cases approved by the Board, as noting in the Applicant’s updated Applicant’s Statement – BZA Exhibit 20A

3. Letter from the previous Zoning Administrator and follow-up with the current ZA.

Attached hereto is a determination letter from the previous Zoning Administrator, Matthew LeGrant, dated April 20, 2017, regarding both the issue of (i) whether one may have two residential dwelling units in addition to a non-conforming use in the RF zone, and (ii) whether special exception relief under E-5201.1 is available for a property that includes a non-residential use. Stated another way, can a residential property that includes a nonresidential use be considered a “principal residential building” for purposes of E-5201.1?

The property that was the subject of this letter was 1500 Ogden Street, NW. In that case, the property owner had a non-conforming retail use along with a single residential dwelling unit. The retail use and the residential dwelling unit were of equal existing floor area sizes. The Zoning Administrator determined that because the proposed square footage would result in a majority residential use, BZA special exception for lot occupancy was available to that applicant.

In the present case, pursuant to the plans in the BZA file, the existing Building has a residential net square footage of 753 square feet (52.5%), and a commercial net square footage of 682 square feet (47.5%). The proposed numbers will be 2,373 SF of residential (77.7%) and 682 SF of commercial (22.3%). Using Mr. LeGrant’s rationale in the 2017 letter, the subject property

in this case is considered a principal residential building for purposes of E-5201.1.

In this same letter, the Zoning Administrator also found that the Applicant was permitted to add a second residential dwelling unit, despite having a nonresidential unit along with those two units. However, the Applicant in the present case has now revised its proposal so that only one residential dwelling unit will be provided.

Also included as an attachment here is an email from Mr. LeGrant to the project architect regarding the subject property, in which Mr. LeGrant confirms that the subject property is a residential property for purposes of determining the maximum permitted lot occupancy, using the same majority-residential approach from the 2017 letter.

We have emailed the current Zoning Administrator to ask for confirmation of the determinations in the LeGrant 2017 letter. We will inform the Board immediately upon receiving the Zoning Administrator's response.

4. Updated plans showing rooms and windows.

The revised plans submitted herewith include a rear elevation, showing windows, and more detailed floor plans. Note that the Applicant is revising the application per this submission to include only one residential dwelling unit instead of the originally proposed two residential dwelling units.

Respectfully Submitted,

Martin P Sullivan

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2025, an electronic copy of this submission was served to the following:

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